2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

POLITICAL GROUPINGS

LOCAL ADMINISTRATION

Kazak political groupings may be considered from the point of view first of local administration and second of larger units. The local political group was normally the aul, and consisted, as said above, of an uru in its functional sense of related family groups living and migrating together, plus individuals such as hired workers, slaves and relatives on the maternal side who belonged by birth to other uru but resided among the first. The larger units which may be called "tribes" consisted of rather loose and constantly shifting confederations of local groups and should not be confused with the term "tribe" as sometimes applied to the more inclusive genealogical strata. Closely related uru might be found in different and hostile tribal confederations.

Local administration lay in the hands of officials, or rather more accurately, outstanding individuals, known as bij and aqsaqal. It is difficult to distinguish accurately in practice between these two dignitaries; my informants tended to use the terms interchangeably. Strictly speaking the bij was a judge who administered the customary law, while the aqsaqal was the director and administrator of the economic life of the group. He supervised the occupancy of grazing lands and chose the routes and dates for migrations. Bij is sometimes confused with another title, bek or beg, which, according to my informants, was a general honorary term applied to rich powerful men, the owners of large herds.[1] Aqsaqal, meaning literally "white beard," is said by Begaliev and Gavrilov[2] to be used as "oldest in the gens," "elder," as well as "overseer," the sense in which I employ it. The process of the extension of its meaning here is obvious. Tlenshiev said bek might be synonomous with aqsaqal.

My informants also classed the molda[3] as an administrative official. To him were referred cases involving the shariat, or Moslem law, in distinction to those covered by the old common law.[4]

There are faint suggestions of a religious function having formerly appertained to the aqsaqal in his capacity of being in theory, if not actually, the oldest of the uru. Zaleskie[5] mentions "certain ceremonies and prayers" which he recited on the occasion of marriages, and Levshin[6] reports that before setting off on a war or raiding expedition the "chief

[1] See Lansdell, *Russian Central Asia*, 310, who says that in the south bek is used instead of bij. Begaliev and Gavrilov distinguish between the two, defining bij as "judge" and bek as "feudal lord" or "prince" (*Kazaksko-Russkii Slovar'*, 43, 46).

[2] *Kazaksko-Russkii Slovar'*, 27.

[3] "Mullah," Mohammedan priest, teacher, learned man.

[4] Arabic: adat; Kazak: zan.

[5] *La Vie des steppes*, 24.

[6] *Description des hordes*, 373–74.

again necessary to distinguish between theory and practice. In theory the uru was supposed to avenge any injury done to one of its members for which compensation was not forthcoming, and on the other hand was collectively responsible for the payment of damages for any injury which one of its members might commit against a member of another group. In practice, however, according to my information, class affiliations were in general of greater importance than blood relationship. Whereas, as mentioned above, disputes between powerful individuals of different groups would commonly lead to war involving all their kinsmen and followers,[1] the humbler members of the uru could not count with any certainty upon receiving support from their wealthy patrons. If, of course, the leaders of the uru were looking for a pretext to begin hostilities they might seize eagerly upon an injury done to any of their followers which would serve to justify their action. On the other hand if it suited their policy to remain on good terms with the opposing group the victim would obtain scant sympathy. He might perhaps resort to direct action to obtain redress but in the event of coming to grief would be disavowed by his own uru. In opposite circumstances an influential individual responsible for an injury might requisition the amount of the damages from his henchmen, if he decided to pay them at all, while the poor man could only hope that his patron would feel generously inclined. The claims of kinship were weighted in favor of the upper class and the right of resorting to arms tended to become their prerogative.

LAW

In the previous section[2] I have discussed baranta as the ultimate means of settling disputes by recourse to arms. Normally, however, it would be considered only as a last resort. For the settlement of nearly all possible grievances of one individual against another the Kazak had elaborate provision in their system of customary law.[21]

Under this legal code all actions were considered as claims for damages by one party from another. No action could be taken against an individual in the interests of society as a whole but only on the charge of specific injury to person or property brought by the victim.[22]

Such charges did not distinguish between civil and criminal offenses. All injuries from murder to the misuse of borrowed property might be compensated for according to an elaborate tariff of fines, damages and reparations. It was the office of the bij, or judge, to fix the responsibility for damage done and to determine the amount of compensation to be paid.

This was accomplished through a process of trial involving the examination of witnesses for both sides under oath. It is difficult at the present time to estimate accurately the nature of trial procedure in the days prior to the Russian occupation. Most accounts of

[21] Adat or zaŋ; the former is the borrowed Arabic term, the latter Turkic. See Grodekov, *Kirgizy i Karakirgizy*, 20.

[22] Dingelstedt, *Le Droit coutumier*, 321.

1 [See cat. 116, p. 66 -- Analyst]

2 [See cat. 116, pp. 66-67 -- Analyst]

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

695 Kazak common law[33] describe it after it had been considerably codified and systematized
[692] by Russian administrators.[34] A system of "people's courts," presided over by three judges elected subject to government approval was instigated, trial procedure formalized, and appellate courts established. According to my informants, whose ideas though somewhat vague agreed on the main point, the court of the bij had formerly been rather loosely organized. As mentioned above there was no fixed succession to the office of bij; a particular case might be referred to any outstanding individual who would render a decision according to his lights or interests.

Trial procedure consisted of hearing the evidence under oath of direct witnesses, if any, to the acts under consideration and of specially selected "character witnesses," relatives of the two parties. The "character witnesses" were not directly concerned in the case under consideration but were chosen from among the more distant relatives of the litigants and had to be acceptable to the opposing side.[35] The judge for his efforts in the
[693] case was rewarded with presents from both parties if the affair could be settled to their mutual satisfaction,[36] but according to my informants he would frequently weigh his decision in favor of the individual from whom the largest present might be expected.

Concerning the cultural attitudes toward various offenses and specific methods of punishment or amounts of compensation there is great discrepancy and contradiction not only between the accounts of different writers but frequently within the pages of one report. The details of indemnification in particular cases are not of immediate concern but the question of the ultimate source of compulsion for enforcing them is of importance.

696 The bij's court had no direct executive or police powers. My informants were unable to say what would happen if a man refused to pay a judgment rendered against himself. Kargabaiev said, "It would never happen." I was not able to continue this line of inquiry but, although public opinion was clearly the final and only real source of coercion, yet it appears, as mentioned in connection with baranta, that the creditor might be permitted and perhaps expected to take matters into his own hands by attempting to collect the obligation by force. Grodekov[37] also gives indication that it might be possible for an individual incorrigibly lacking in social cooperation to be expelled from his uru.

689 Expulsion was also apparently the punishment for grave offenses against society as a
626 whole, as for example serious breaches of the exogamic rule for which it was impossible to atone by compensation. Such cases, according to the informants, were very rare but used occasionally to happen when a man and girl who were close relatives fell in love with one another. It would be necessary for them to "go to another aul, or to the mountains, or to the city."

[33] See: Iraastov, *Obychnoe Pravo*; Ibraginov, *Zametki o Kirgizkom Sude*; Samokvasov, *Sbornik Obychnago Prava*, 200–43; Koslow, *Das Gewohnheits Recht*; Petri, *Über die Rechtsbegriffe*; Grodekov, *Kirgizy i Karakirgizy*; Dingelstedt, *Le Droit coutumier*.

[34] The most complete account in English of the old Kazak customary law, largely translated from the Russian edition of Levshin, has been recently published by Riazanovskii (*Customary Law of the Kirghiz*).

[35] Dingelstedt, *Le Droit coutumier*, 323–26; Levshin, *Description des hordes*, 400.

[36] Dingelstedt, op. cit., 220.

[37] *Kirgizy i Karakirgizy*, 246–48.

The thief himself cannot receive syuyunchi, even though he also brought back the lost animal. 431

Kinsmen cannot demand syuyunchi.

If someone receives syuyunchi for promising either to find the animal or to detect the thief (muynyna koyib beremen), and after that if he does not succeed in accomplishing the one thing or the other, he returns the syuyunchi received in one and a half times the amount.

The bit aygak (personal witness) who discovers a murder receives one-fifth of the wergeld as a reward. For the discovery of or informing about thieves 4 tillias are given for a horse, and 8 tillias for a camel. The witness is awarded the amount indicated only if he himself, in the presence of the biis, indicates the thieves. In order to confirm the witness's accusation of the person indicated by him as having committed the misdemeanor or crime, the biis sitting in judgment require the accused to choose persons from the side of the witness to take an oath (1) that he has actually indicated the guilty person. But 431 695

1. The choosing of persons from the witness's side to take the oath takes place in the same order as the selection of persons from the side of the defendant.

if /175/ the accusation of the person indicated by the witness is not confirmed after the admission for the oath by the persons chosen, the accuser pays back the person from whom he received syuyunchi in an amount double what he received. (Absaliamov, Chimkent uyezd).

/176/ CHAPTER X

The organization of the peoples court by the law of 1867. - The rank and position of the biis. - Arbitration. - The order of selection of cases. - Attorneys. - Witnesses. - Guarantors. - Concrete evidence. - Payment of the bii /biilyk/ . - Losses and expenses. - The organization of the people's court by the law of June 12, 1886. 692

Among the Kazakhs the people's court was organized in the following manner on the basis of the law of 1867.

The people's court is the examination of cases according to folk customs by chosen judges - biis.

The following types of courts were organized: 1) the individual court of the biis, 2) the volost session of biis, and 3) the extraordinary

692 session of biis.

In every volost from 4 to 8 biis were elected both for the judgment of criminal cases, subject to the people's court (1) and

673 1. Murder and baranta were considered criminal cases, subject to the people's court.

[698] The Kazakhs were judged by a military court for treason, inciting their fellow tribesmen to oppose the government, attacking the mail and military transports, the murder of Christians and other persons who had expressed the desire to become Christians, and for the murder of officials.

The Kazakhs were tried according to the common criminal laws of the empire for brigandage, stealing, attacking merchant caravans, flight into foreign domains, setting fire, manifest opposition to authorities, the manufacture and transmission of counterfeit money and the stealing of state property.

for every sort of litigation and suit.

693 The biis were elected by the people for three years.

Anyone could be chosen as a bii who enjoyed the respect and trust of the people, had not been blamed by a court, was not under investigation, and was not less than 25 years old.

The elected biis were confirmed by the military governor. They did not receive a salary, but they had the right to receive /177/ a special fee /biilyk/ for judging cases, which was established by folk customs. The fine for property suits could not be determined as higher than one-tenth of the value of the suit. For the judgment of murder cases of personal injuries, the biilyk was designated according to the customs.

692 The opposing sides in a litigation could, by mutual consent, turn to one or several biis for the examination of their case. The agreement of the litigating sides on the choice of a bii or biis for the judgment of their case had to be entered in the book established for the recording of judgments. In such a case, the judgment of the biis, as having the character of arbitration (1) was final in any amount.

1. In ancient times all courts were courts of arbitration among the Kazakhs, i. e., they were chosen each time by both sides. The plaintiff and the defendant appeared before the bii chosen by them, and if the bii was far away they

appeared before another respected person, and as a sign of submission to his judgment each cast his whip or cap before him. The person who was dissatisfied with the decree of such a judge was submitted to blows of a whip in case of defiance or paid a fine to the arbiter. Two, three or more biis could be chosen instead of one.

When the sides of the litigation disagreed on the choice of biis, the case was judged by a bii from the defendant's uyezd, indicated by the plaintiff. Meanwhile the defendant had the right to object to only two of the biis indicated by the plaintiff.

The biis made the final decision on cases concerning a value no higher than 100 rubles (5 horses, 50 sheep).

Periodic volost sessions of biis were designated for the judgment of cases concerning sums greater than 100 rubles, at which all the biis in the volost were obligated to be present.

For cases submitted to the judgment of volost sessions, the petitions for suits were brought to the volost administrator. The volost meetings were called according to the measure of accumulation of petitions for suits, and their time and place were determined by the uyezd chiefs.

The sessions of the volost biis took place in the presence of the volost administrator, but the law strictly forbade him to interfere in the trial.

/178/ The volost sessions had the right to settle cases for any sum, but their decision was final only for cases up to 1000 rubles (50 horses, 500 sheep).

Declarations were made to the uyezd chief on unfinished judgments of the volost sessions within a seven day period from the day of the notification of the judgment. Petitions for the examination of criminal cases were also taken to the uyezd chief.

Extraordinary sessions were convoked by order of the uyezd chief for the judgment of the cases mentioned, in accordance with the need, if the case affected one uyezd, or upon the agreement of the uyezd chief with the jurisdictional authorities, if the case affected volosts of various uyezds. Extraordinary sessions were brought to the attention of the military governor.

The extraordinary sessions of the biis took place in the presence of the chief of the uyezd where the meeting was held, or in the presence of an official specially commanded to be present.

692 But their interference in the court was strictly forbidden.

The decrees of the extraordinary sessions were final. The examination of cases in the volost and extraordinary sessions was determined by custom.

Marital and family cases were settled by biis in court according to folk customs. In marital cases, the side which was dissatisfied with the decision of the people's court could appeal to the uyezd chief, who was deciding /reshal/ the case, and in more important cases, the decision could be presented to the military governor for review.

The Kazakhs could turn to a Russian court with a petition to judge their case, with the mutual consent of both sides, expressed in a written document.

The court of the biis was rendered clearly and publicly.

It was the obligation of the local Kazakh chiefs to produce the defendants in court and to present witnesses on the demand of the biis.

The decree of the biis was inscribed in brief in a special book. The biis were required to affix their seals to a judgment.

/179/ The decision of the biis was announced to both sides, and a copy of the decree authenticated by the affixing of a seal, was given to the side in whose favor the case was decided.

696 The carrying out of the decisions of the court was laid to the duty of the volost officials, who were subject to suit for delayed fulfillment of the decisions, on the basis of general laws for the inaction of the authorities, and also subject to the repayment of losses, if such losses were incurred by their delay. (1)

1. Articles 181-210 of the projected code for the administration of the Semirechie and Syr-Darya oblasts.

* * * *

693 Under the khans, the biis were designated from a number of rivals, petitioning for this office with gifts (one or more horses), and who were known for their intelligence, authority, erudition and experience. They did not consult the wishes of the people. Candidates whose ancestors had not been biis could receive this office only rarely and with difficulty.

The Kokandians did not touch this system.

At present many place intelligence and justice in the biis

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or the clan chief wait patiently for a large gathering or a memorial service, to which they go, usually taking with them an elder from their village or of their clan, and this elder must defend their complaint before the gathering, and a reexamination which is considered final depends on this gathering. Torgai notes concerning this custom: Biis and elders are both at memorial services, and therefore both dissatisfied sides go there. A bii himself sends them there for pacification, but the host of the feast or memorial service forbids the settlement of court cases lest the celebration be spoiled (buzul masyn).

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A bii does not enter into the examination of a civil case unless he is turned to.

/182/ In former times a bii who knew of a crime concerning which no complaint had been presented could make an investigation of it on an equal footing with aksakals and respected persons (yakhsy ksiler), for the satisfaction of the sufferer.

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A bii can refuse to examine a case, especially for bad people. On the other hand, persons dependant on the bii, now excluding those serving him as well, can also refuse to be examined by him (Auliye-Ata uyezd).

If a trial takes place under a bii from the volost of the defendant, and both sides are dissatisfied by his decision, they can turn to an outside person (khalis ksi) or to a bii from another uyezd, but on doing so they must compose a written document (saldym kagaz) concerning the choice of the bii, as a result of which the trial becomes one of arbitration, and final. Otherwise they can turn to a volost official, who either refuses or consents to designate a new examination, but this time not from a single bii but from three or four.

If the plaintiff and the defendant are of different volosts, in the Kurama uyezd it is the custom to choose any bii of a third volost as arbitrating bii.

A court of arbitration (triteski sot), from which it is impossible to appeal, is considered in the present official Kazakh language to be an examination by biis, which is preceded by a document from the sides concerning the choice of the bii or biis, and consent to the decision which they will decree.

If both sides were from one volost it is difficult to appeal. It is easier if they are from different volosts, because the biis are suspected of partiality toward those in their jurisdiction.

For an extraordinary session /Russ. chrezvychainyi s"ezd/

692 (kurulachak s"ez, chirizvichaynoy s"ez), one bii was sent for from every volost in the uyezd, according to the election of the biis of the given volost. Every bii who wanted to get into the session, as Torgai expresses it, gave the electors, the biis, a bribe of 2 to 4 rubles each. If there were many who wanted to go, they cast lots (shek salady) among themselves. The person to whom /183/ the lot fell (shek tusken) paid his electors the money mentioned. After this they elected him with the affixing of a seal, and he departed for the session.

There was no prosecution for a bii's refusal to take part in the examination at the session.

Not more than two or three biis are challenged from the session by declaration of the plaintiff, because of their kinship, matchmaking, acquaintance with the defendant, or the receiving of bribes. In a court of arbitration there are not supposed to be challenges because each side chooses its biis itself. For false suspicion (usek suz) in relation to a bii (kinship with the opposing side, bribes, etc.) punishment is not customary.

The declaration of the challenge of a bii is not accepted after the judgment of a case by the session.

695 The meeting considers the decision being appealed and all the papers relating to the case: acts, documents, (1) reports. It

1. In an official document of a debt, the year, month and day it is issued are indicated; the period in which it is to be paid; the sum, including the interest, calculated by the period over which it is to be paid; its authentication by the village head, etc.

The sum which is recorded in the document is sentenced to be paid.

If the person who presented the document and the guarantors mentioned in it disclaim it, but the plaintiff and the bii recognize it, it remains in force without the assignment of an oath. In just the same way, if one of three persons presenting such a document recognizes it, it remains in force.

hears out the declarations of the opposing sides, and recalls, if necessary, those witnesses whose testimony was already mentioned in the decision under review, while also taking new evidence into equal consideration. In land disputes they ride out to inspect the

4:Grodekov--179 E-5 (ca 1885) 1889 RQ2 Kazak RQ2

196 The decision of the court was formerly executed by riders of the khan or the riders of the biis who decided the case, but any outside person, who received remuneration from the person who won the case.

At present the volost administrators are obliged to carry out the decisions of the biis in the following order: when they have received a copy of the decision, cut out of the book, upon the approach of the date indicated in it for the payment, they announce it through village elders to the defendant, and then, in case he refuses to pay, they take an animal corresponding to the sum, which is evaluated by honorable persons. After the entire sum has been paid to the plaintiff, the volost administrator makes a note of this on the reverse side of the copy, with a voucher from the recipient, and gives it to the person who has paid.

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192 In its regulation of the people's court, the law of 1867 caused it to deviate considerably from the customary court. This fact /200/ had such an essential and pernicious effect on the development of the weak sides of the courts of the biis, that their position proved to be very unsatisfactory and brought many local officials to the conviction that it was necessary to abolish this court and exchange it for the Russian court.

While according to folk custom the litigants are free to turn to any bii for the examination of a case, the law of 1867 required the Kazakhs to be judged only by the biis confirmed by the military governor. In cases where the litigants disagreed on a court of arbitration, and in practice these were very frequent, the law required the plaintiff to choose a bii expressly from the volost of the defendant. Since under the existence of the clan principle every bii naturally stands for his kinsman, the required judgment of a bii from the volost of the defendant is the equivalent of renouncing justice, for the plaintiff cannot expect impartiality from a kinsman of the defendant. Even within one volost, such an organization of the bii's court did not guarantee a just court, because with the obligation of turning to the biis in the volost and with the limitation of their number the biis were made accessible to profit, corruption, the influence of rich and honored persons, and of the electoral parties.

In order to ensure the justice of the decisions of the more important cases, the law of 1867 limited the competency of the individual biis to the sum of 100 rubles, and created extraordinary

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sessions of biis for the judgment of cases up to 1000 rubles, and cases of murders and baranta, also establishing appeals of decisions according to instances. But the mass of small cases remained under the jurisdiction of individual biis and even volost sessions, consisting of a small number of these same biis, corrupted and finding themselves under the influence of rich kinsmen and volost administrators, could not act better than the trials by one person of the biis.

As a result, the trial of the biis became a corrupt trial, unpopular and subject to native officials. The unsatisfactory character of the people's court according to the law of 1867 for the examinations of the complaints of the people brought about the interference /201/ of the Russian uyezd administration in the cases of the bii's courts. The law subjected cases under 100 rubles to the jurisdiction of a bii chosen by the plaintiff from the volost of the defendant. But by using the right of challenging the biis, the defendants were constantly evading trial, and the plaintiff, in order to obtain satisfaction, was obliged to turn to the collaboration of the volost administrator, who could summon both the defendant and the biis. For the latter often failed to pay attention to the petition of the plaintiff for examination, and found justification in their own challenge by the defendant and in his disobedience. In many places there was, in practice, such an order of taking cases into the court of the biis, that not a single case was examined by the biis unless a complaint was taken directly to the uyezd chief or to his assistant, and unless a special order was taken to the volost administrator each time for the examination of the case by the biis. Thus the biis fell into direct dependance upon the volost administrators and the people's court became a field for the arbitrariness of the local authorities.

The Kazakhs, in the words of Sultan Babagaliev, adapted to the court of the biis the proverb: "If an owl is hit with a stone, the owl is killed; if a stone is hit with an owl, the owl is also killed" (tash bilyan yapalakni ursa, yapalak uledi, yapalak bilyan tashni ursa, yapalak uledi).

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The law of the 12 June, 1886, on the administration of the Turkestan region, preserved their people's court for the Kazakhs.

Submitted to the jurisdiction of the people's court is: 1) all cases concerning crimes and misdemeanors committed by natives, with the exception of the following crimes: those against the Christian faith, against the state, against the order of the administration, the state or public service, against the decree of state and land duties,

692 against the property and income of the treasury, against the public
673 welfare and well-being, the violation of quarantine regulations, the violation of decrees against epidemic and contagious diseases, the violation of rules established in case of livestock losses, against the common peace and order (the forming of /202/ gangs with malicious intent, and the receiving of persons under suspicion, false denunciations and false evidence in cases, judged according to the laws of the empire, the concealing of fugitives, and the spoiling of telegraphs and roads), against the laws of estates; against life, health, freedom and honor (murder, infliction of wounds, and fights, resulting in death, rape, unlawful detainment and confinement) against property (the violent seizure of foreign immovable property and the destruction of border landmarks and signs, setting fires and in general intentional destruction of foreign property, robbery and plundering, the stealing of treasury property and the falsification of Russian documents). 2) Cases of crimes and misdemeanors, which although not included in those mentioned above, were committed by natives against Russians, and likewise within the borders of Russian settlements. Such cases are under the jurisdiction of court establishments on a general basis.

692 Civil disputes and suits between natives and persons who do not belong to the native population, likewise cases between natives of various nationalities who have separate people's courts, and also suits based on acts carried out with the participation of Russian authorities, are carried out by justices of the peace and regional courts on a general basis.

Jurisdictional disputes concerning cases which take place between people's courts and examining magistrates, justices of the peace and also their assistants are settled finally by the regional court.

Persons not belonging to the native population who are engaged in lawsuits with natives, and likewise natives who have different people's courts in cases among themselves, can if they wish, turn to a people's court. In such a case the plaintiff forfeits the right to open suit on the same case with a justice of the peace or in a regional court.

The jurisdiction of civil cases is determined by the place of abode of the defendant, and the jurisdiction of criminal cases by the place the crime was committed. A suit which relates to several defendants is declared in the place of abode of one of them, at the choice of the plaintiff.

/203/ Cases subject to the jurisdiction of the people's court

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can be subject to the examination of a justice of the peace of a regional court only at the desire of both sides, which is announced to the court in writing or orally, and entered in the document.

Cases begun in the people's court cannot be taken out of its jurisdiction even though the suit was reconveyed to a person who was not under the jurisdiction of the given court.

A case which is subject to the jurisdiction of a people's court, of which the essence is the determination even of one instance of this court, cannot be transferred to a justice of the peace or to a regional court, except in cases when the people's court makes a sentence to a punishment which is outside the limit of its authorities.

Sentences and judgments of the people's court which are decreed in excess of power, or in cases which are not under their jurisdiction, are not carried into execution, and the uyezd chief represents the procurator for them. The latter enters a protest in the regional court, which, in case the sentence is overruled, returns the case with the necessary indications to the people's court for the establishment of a new judgment, or if the case is not under the jurisdiction of the people's court, it gives it legal direction.

692 689

If the sides are not pacified, in cases of crimes and misdemeanors, the people's court, independent of the determination of payments for losses and damage, imposes on the guilty parties the following punishments: a) fines in money no higher than 300 rubles, and b) confinement under guard for no more than one year and six months.

If as a consequence of the incorrigibly bad and pernicious behavior of the person under sentence, the people's court considers the punishment which it has a right to impose inadequate, then having determined it within the limits of its authority, it can intercede through the regional government to send the person under sentence from his place of habitation, after his punishment is finished.

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A monetary fine designated by a people's court as a personal punishment is, in the case of insolvency of the person under sentence, substituted for by arrest of no more than three months, or by his being given over, by /204/ command of the uyezd chief to public labor for this same period of time.

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People's courts are desginated, by election of the population, for three years.

The number of people's courts and the limits of their sectors are determined by the regional authorities before the elections, so that the number of courts among the nomads in the volost may be no less than four and no more than the number of village communities

692 in the volost.

692 Any person of the inhabitants of the volost can be elected to
693 the people's courts who enjoys the respect and trust of the people, and who has been subject by sentence of the court, to punishments in excess of arrest for seven days or monetary fine of 30 rubles, who is not under judicial examination or under trial, and who is no less than 25 years of age.

The elections for the people's courts take place by a volost meeting of the electors, who are chosen by village meetings with one for every 50 heads of houses.

Two candidates are elected for every office of the court. The confirmation of one of them for the office of the judge and the other as a candidate for it depends on the governor, who designates new elections in case neither of these persons is confirmed. In the case of absence, illness or death of the judge, the candidate for the position carries out his duties, with the permission of the governor.

The people's judges receive payment on the basis of the customs existing on this matter.

The people's judges are equipped with special insignia to be worn when they are carrying out their official duties, as well as their official seals and books for the recording of judgments and deeds.

The close supervision of the keeping of the books is a duty of the uyezd chief, but meanwhile the responsibility for lack of observation of the established order falls upon the judges and chairmen of the sessions, according to who is concerned.

The people's judges are transferred /205/ to trial by the regional authorities for criminal breach of trust, on the basis of the decrees of the code of criminal law procedure which determine the order of arraignment of persons of the administrative department.

The people's court constitutes: a) courts presided over by one person, b) sessions of judges, and c) extraordinary sessions of judges.

692 All cases, both criminal and civil, begin before a single judge.
695 But the litigants have the choice, by mutual consent, to turn directly to a session for the examination of their cases, avoiding the single judges, and likewise to outside persons, whom the litigants entrust with the settlement of their disputes. The judgments of the chosen mediators are final, no matter how large the value of the suit is.

The mutual agreement of the litigants on the choice of mediators must be entered into a special book established for this purpose in the volost, and signed by the litigants. The judgments

1/ [Should be "has not been" - A.]

692 ● 695

of the mediators are also recorded in the same book, which are signed and confirmed by both the seals of the mediators and of the litigants.

The people's courts of the nomadic population proceed to examine cases upon the complaints of private persons or upon a cummunication from the volost administrator or the uyezd chief. When the litigants disagree on the choice of a judge, the case is decided by a judge indicated by the plaintiff, but meanwhile the defendant is allowed to challenge two judges. [694]

The decisions of judges, involving sentences of no more than 30 rubles, and no more than seven days of arrest, are recognized as final and are not liable to appeal.

The decisions of the judge are announced to both sides, with the issuance of copies of the decision in case of demand, authenticated by the affixing of the official seals of the judges.

The people's courts may hear testimony concerning every sort of deed and agreement among the natives subject to their court, with the exception of settlements concerning immovable property, when the right of property in them is confirmed by deeds made out under the force of the general laws of the empire.

/206/ Deeds issued by the people's courts must be signed by the sides in their own hands, or for illiterates, by no less than two trusted persons and witnesses. They confirm the signature and the official seal of the people's court authenticating it, and they are recorded to the letter in the corded /shnurovia/ book, under the appropriate number in the sequence.

Sessions of judges are called together in every volost, and are made up of all the judges, although a session is considered legally constituted when no less than three judges are participating. The sessions are called together when needed, at times determined in advance by the uyezd chief. The sessions take place in the presence of the volost administrator, whose duty it is to pay special attention to decorum in the place of meeting of the session. 692

The people's judges appearing at the session elect a chairman from among them, who directs the order of examination of the cases.

Cases of complaints concerning inconclusive decisions of single judges are subject to the jurisdiction of the sessions of the people's judges. The judgments of the sessions count as final, with the exception of judgments decreed in excess of their authority or in cases not subject to their authority.

It is considered the duty of the sessions of the people's judges

692 to encourage cases concerning the dismissal from official duties and bringing to trial those of their members who permitted clear abuses in their judgments. The uyezd chief presents the decrees on this subject to the oblast government.

The delivery to the sessions of the defendants and witnesses is the duty of the village authorities.

Complaints concerning unfinal decisions of single judges are transmitted in a period of two weeks from the day of the announcement of the decision to the volost administrator, for presentation to the session. After the opening of the session these complaints can be transmitted to the session itself.

[695] The people's court is carried on aloud and publicly.

/207/ Extraordinary sessions of the people's courts are designated, by order of the governor, for the judgment of cases in which residents of various uyezds or volosts are involved , as well as for the review of intercessions of the people's courts and their sessions on the banishment of the persons under sentence. The extraordinary sessions are composed of the judges of those volosts from which the litigants come or the persons under sentence, with no less than one judge from a volost.

The designation of the judges for an extraordinary session, except for those elected by the litigants, is done by the uyezd chief. Judges who have participated in previous sessions within a year take part only at their own wish.

Extraordinary sessions of the courts take place in the presence of the chief of the uyezd in which the session meets, or an official specially commandeered for this purpose. The duty of these official persons is exclusively to see to the decorum in the place of meeting of the session.

The extraordinary sessions of the people's courts act on the basis of the rules established for ordinary sessions.

[693] People's judges, who are absent from a session, ordinary or extraordinary, without legally acceptable reasons, are subject to a monetary fine of 10 rubles, by order of the uyezd chief, which can be appealed to the governor within a period of a month. These fines go for the building of places of confinement.

696 The carrying into execution of the decisions of the people's court is laid upon the volost administrators and village elders, under the supervision of the uyezd chief. Copies of the decisions carried out, with a note of their fulfillment, are preserved with the volost administrators. Persons carrying out the decisions, as well as the uyezd chiefs supervising them, are subject to legal responsibility and the reparation for damages for slowness and improper action in this connection.

[176 cont.]

[148] spoken and who had been promoted to the rank of colonel for his discreet conduct during his stay with the hordes and for having induced Abulkhair's subjects to swear loyalty.

Here are the most outstanding articles of the instructions presented to Kirilov as he was about to depart. He was enjoined to do the following:

1. To build a city and a fort at the mouth of the Ori River, and to seek to attract residents to it;

2. To send the letters patent which he had for Abulkhair, for Shemiaka, khan of the Middle Horde, for the tribal chiefs of the Great Horde, and for the khan of the Karakalpaks;

3. To invite the khans and the elders or tribal chiefs of all the hordes to come to him;

4. To require the swearing of the oath from the Great and the Middle Hordes;

5. To send Sultan Erali back to his father under a good escort;

[177]

6. To maintain the obedience of the Kazaks by gentle means and gifts or by force and terror, depending on the circumstances;

[311] 7. In case Abulkhair or other khans or ordinary Kazaks wished to pasture their herds near the new city, to assign them lands for this purpose. And in case the khans wished to have [342] houses, either as temporary lodgings or to live in, to build them under the walls of the city according to their custom, and even to give them permission to build mosques, but to maintain a guard there for a service of honor and for supervision;

8. To designate the Ural River as the border and to guard it so that no Kazak might cross it without permission;

● [292] 9. To establish a tribunal for litigations, composed of Russian officers and Kazaks chosen from among the most distinguished men, such as the sons of khans and of other sultans or of elders, and to see that each was judged in this tribunal according to the customs of his country;

[439] 10. After the founding of the city and after conferring with Abulkhair, to profit by the first good opportunity to send a caravan

[267 cont.]
X 648 721 726 we will say that his raids and those of his partisans forced the Russians to send two [268] detachments of troops beyond the Ural. The first was composed of 2,760 men and was sent from the Ural toward the source of the Emba. The second, of 1,250 Cossacks, was sent from Uralik /Uralsk?/ toward the mouth of that same river. Snow prevented these troops from acting according to their instructions, but nevertheless the expedition was not entirely useless. They seized 213 women and children, for [727] whose ransom a large number of Russians who had been captured earlier were given up.

X 648 439 712 It will be understood that such conditions were not of a sort to make caravan trade flourish between Russia and Central Asia. For a long time the khans' promises to protect the caravans had not been believed. Long experience had made their weakness known. Nor could it be hoped to restore the brigands to reason for a long period of time. For this reason means were sought to establish the safety of trade by force of arms. It was proposed, to this end, to build forts on the Emba and Temir rivers and defenses on the route from these two points to Iletsk [Sol-Iletsk], or to set up only one fortification on Mangyshlak [Peninsula] on the Caspian Sea and to send the caravans from Guryev by sea. Thus from Orenburg to Guryev they could follow the route along the Nizhne-Uralsk line in complete safety.

One of these plans was not carried out, partly because of the extraordinary difficulties which had to be surmounted and partly because the old trade routes were very advantageous to the Khivans and Bukharans, for although the new ones would have been safer, they still would not have been entirely safe from attack.

X 648 692 The Orenburg border commission controlled matters pertaining to the Kazaks, or rather it examined all the relations of the government with this people, but it could not study the individual disputes which arose between the residents on the two sides of the line. The [269] Empress, in order to remedy this, conceived the plan of establishing a tribunal in whose operations the Kazaks would take the same part as the Russians, and which would serve them as a school of justice. This at least was what

[269 cont.]
X 648 Catherine thought when she signed the ukase on May 2, 1784
● 692 for the formation of a border tribunal. Under the chairmanship of the supreme commander of Orenburg, it was composed of two clerks, two merchants, and two peasants who were Russians, a Kazak sultan and six Kazak elders, a deputy from the Bashkirs, and one from the Meshcheriaks. Its duty consisted of examining litigation and criminal cases which might take place between the Kazaks and the border residents.

X 648 At the same time as this establishment, from which great
[346] advantages were expected, it was ordered to open mosques and schools for the Kazak children (1). The mosques were finished

1. May 2, 1784.

at Orenburg and Troitsk in 1785, and when this news was received, Catherine gave orders (2) to build schools and caravansaries

2. September 4, 1785.

or markets on the same sites without delay.

The persistent concern which this sovereign took in the state of the Kazaks was guided by her close attention to matters concerning them and a perfect knowledge of the real situation of her half-
[177 savage subjects. Their constant banditry did not divert her from
721] the intention of giving them a taste of good organization. On the one hand, she justly forgave them for many signs of insolence, as men who had no idea of the advantages of public order. On the other hand, her clever mind was not slow to discover that the Kazak raids were often no more than just reprisals for the wrongs and violences they had undergone from the Russians on the border, without speaking of the Bashkirs, who often crossed the Ural in defiance of all the prohibitions against it and laid waste their enemies.

X 648 [270] Actually, many of the raids were the fruit of vengeance.
721 But the daring undertakings of a powerful band of brigands, which gathered in 1784 near the borders, were not among those which

[279]

The most important was the establishment of tribunals, which were called rasprava. Two of these were opened in the Alimul and Baiulin descent lines, because of their large numbers. The Semirod line only had one. Each rasprava was composed of a president and two members, who were required to meet every day and to examine, with all three present, the petitions addressed to them and to give their decisions, to give satisfaction to the injured and the oppressed, and to give the dissatisfied the right to appeal to the border tribunal sitting in Orenburg. But since the members of these tribunals did not know how to read, all the writing was confided to a mullah, or secretary, who was assigned to each tribunal with an aide. His duty was to stamp the papers which were entered, copy them in a notebook, make the notes and protocols, make the examinations, keep the registers, establish and inscribe the hours of hearings, and write the reports, communications, and orders. All this was to be done according to the forms given by the government of Orenburg.

In addition a principal elder was chosen in each of the three descent lines of the Little Horde and several secondary elders to supervise the conduct of the people.

Batyr Syrym, who belonged to the Baiulin descent line, was chosen as one of the three principal elders.

All those who were elected to fill the positions we have named for the first three years were called upon to swear an oath to serve faithfully. Later they were confirmed (1) by the Empress, and they were given large stipends, partly in wheat and partly in money.

1. The preliminary decision of the Empress to open the tribunals was presented to Baron Igelstrom by a rescript of June 3, 1786, and the confirmation of the elders nominated for the places on December 7, 1787.

[279 cont.]

x648 After this beginning Baron Igelstrom, who felt, on the basis of Syrym's assurances, that the establishment of peace in the Little Horde was inevitable, [280] prepared to build cities, mosques, caravansaries, and schools in the middle of the steppes. [177] He reported this to the Empress and planned to comply in everything with the organization of the provinces of the interior and to the regulations published in Russia on public education.

[181] This gratifying and consoling hope did not last long. By the following year, 1788, it was beginning to weaken, and soon it disappeared completely. The people, who had long been [662 578] accustomed to excitement and brigandage, tired of their inactivity and once more began their old disputes, driven from 643 one side by Nurali's kinsmen, from another by Kaip, and from a third by Batyr Syrym. The followers of the latter were the most numerous and the most active. The sultans could have no power over them, as they were no longer respected. The elders [692] chosen to supervise the conduct of the people, as well as the heads of the tribunals, had no authority and dared not give commands, and followed the stream which carried them along.

[721 662] These internal circumstances were joined by others which acted from outside. The Turks, then at war with Russia, sought to incite the Bukharans against the Russians. The Bukharans aroused the Little Horde, and it was to this end that they suggested to Erali, at first, that they help him take back Khan Nurali by force. Later they entered into relations with Syrym and sent him x648 and those of his line an appeal couched in these terms:

721 771 186 662 "To the brave warriors, beys, and elders, Sarytai bey, Syrym Batyr, Shukurali bey, Sadyrbek, Barak Batyr, Dajdan Batyr, peace and blessing. And now our words. Glory to the most high God! By His holy grace, all our affairs are running smoothly. We have but one sorrow. Not long ago an ambassador came to us from the Turkish sovereign, vicar of God, with a letter informing us that the infidel Russians have assembled from all sides and, in alliance with the seven Christian states, have started to march. [281] Since you live closer to the Russians than we do and, consequently, know better how to fight them, we propose

[296 cont.]

[648] [727] studs, to avenge themselves for the thefts and offenses committed against them by the Bashkirs. Finally, this group decided to withdraw into the depths of their steppes and did not agree to come near the Russian borders except on the invitation of General Viazmitinov, the commander in chief of the Orenburg region.

[692] In 1798 it was ordered that a tribunal be established, after the example of the Little Horde and on the request of Khan Vali, in the fort of Petropavlovsk, for the judgment of suits and disputes between the Kazaks of the Middle Horde and the residents along the Siberian border. This tribunal, made up of deputies of these two peoples, was organized in 1800, but the Kazak members let several years pass without appearing, so that it was not opened until 1806.

Here we end the detailed description of the Kazak hordes. [114] Having shown everything which took place among these peoples until the end of the 18th century, we will not speak of the events of the 19th century. The time which has passed since its beginning is still too close to us, and the judgments we could bring to this period would seem either partial, or misplaced, or doubtful.

We consider it necessary, however, to mark the transition between the past and the present by indicating briefly the order of succession of the khans of the Middle Horde and the Little Horde of the Kazaks.

[643] [578] Vali, who succeeded his father in 1781, reigned until his death, which came in 1818. However in his last years he was not the sole khan of the Middle Horde, for because of [297] his quarrels with several tribal chiefs and at the request of several Kazaks, in 1816 Emperor Alexander designated a second khan for this horde, who was Bukei, son of Barak, and who died in 1818.

[631] With him the title of khan died out in the Middle Horde. Today it is divided into districts and governed by a special regulation which we will enter at the end of this work. [This section not translated.]

[643] Aichuvak ruled the Little Horde until 1805 and then abdicated of his own accord because of old age and illness.

His successor was his son Djantiura, who was assassinated by his cousins, the sons of Khan Nurali, and their accomplices.

/215 cont./

423 in the use of land exists because of this. Thus, one clan has a thousand dessiatine of land to a yurt, while another has a few score, a great deal if as high as a hundred dessiatine. The intensified colonization of the steppes has accentuated this abnormality. Finally the general path of development of the economic life of the Kirghiz /Kazak/ cannot help but promote it, namely, the appearance of agriculture, the transition in some places from a natural (livestock) economy to a monetary one, and in connection with this the disintegration of the patriarchal system. The contemporary nomadic village no longer represents families of equal rights. In each one it is possible to distinguish several well-to-do families on whom all the rest of the population of the village is economically dependent. This sort of situation (and the dzhetak system) is getting stronger every year, and especially in the years of "dzhuta" (hunger).

The former patriarchal relations have been retained (in part) in the customary law in the family.

At the fair in Uil. (From a photograph by A. N. Chagin.)

The court among the modern Kirghiz /Kazak/ consists of "biy" (elders in the clan who formerly inherited this duty in the clan from generation to generation). Now the biy is elected by 100-200 yurts (but he can only be a person no younger than 25, who has not been tried and punished). The court of the biy has jurisdiction over all cases concerning alien property and lawsuits in general up to 500 rubles (but not criminal cases). In addition, final judgments can be made on lawsuits involving sums no higher than 30 rubles. In cases above this norm the persons being judged can appeal to an assembly of volost biy (under the /216/ chairmanship of the uyezd chief, and now of the

/216 cont./

692 peasant chief). The latter settle cases for all sums, but a final decision can be made in cases involving a sum no higher than 500 rubles.

[648] [175] Attempts by the Russian government (in 1830 and the 1850's) to reform the people's court ended in failure and made its position so much worse that the reform of 1868, which returned to the old electoral basis of the courts, could not restore the necessary respect to the court. The present biy is a candidate of a certain party, acting in its interests. The court of the biy is held publicly, and a great role is played by the oath of the witnesses or guarantors of the litigants. In addition to the court of the biy there is a domestic court (a survival of the patriarchate) of chosen kinsmen or of one "aksakal." These men conduct the affairs of the clan and are not subject to the control of the biy. Finally there is a court of arbitration which is usually turned to before the people's court.

628 Here one should mention the baranta -- the restoration of violated rights by force or by "one's own judgment." It consists of driving away the livestock of an offender. The best riders of a village take part in a baranta, and much courage and cleverness are necessary to seize horses from the village of the offender. The village that suffers in turn undertakes an attack by way of revenge on the village of the attackers. It can happen that whole volosts take part in a baranta (1).

[648] 1. The immigrants to the Akmolinsk oblast had to cope with baranta in the very first days of their life in the new land. The Kirghiz /Kazak/ not only took the horses from the fields, but also pulled the stables down. In this way the Kirghiz /Kazak/ avenged the restriction of their land which was taking place.

614 622 The patriarchal relationships within the clan and the family are also maintained. The aksakal (the chief of the clan)

/218 cont./

585 [583] they have had a rendezvous, all the bride-money is not returned, but only half, while before these rendezvous have taken place only a small part is withheld. If the groom thinks of marrying the sister of the bride after he has been with the bride, then he is obliged to pay a new portion of the bride-money. /Illustration appears here./ These visits must be innocent in character. If the bride is shown to be pregnant, it is considered a disgrace for

692 291 516

A meeting for the election of the volost biy on the steppe.

585 her and all her clan. The first visit of the groom is made with a quantity of gifts, and he is accompanied by his friends. A holiday is declared in the bride's father's yurt. The bride herself goes to the tent of her closest kinsman, in order to avoid the meeting. At night the comrades of the groom and the assembled women of the village appear at the kinsman's yurt, where they try to kidnap the bride during the feast. A struggle takes place between two parties -- the bride's and the groom's. The latter almost always wins, and the bride is carried on a rug to her father's yurt (this event is called "kyz kashar" -- the flight of the maiden).

565 descent which unite the Kazakhs as a people also divide them into aristocrat and commoner, noble and subject. There are three identifiable social classes, aristocrats, commoners, and slaves. (The slaves are [567] an important class in traditional Kazakh society, but are not central to the discussion here.) At some point in history, the senior descent line segregated itself from the other lines and achieved aristocratic status. The head of the senior family of the senior descent line is the Khan of all the Kazakhs—so goes the theory of Kazakh kinship and social organization.

C93 These aristocratic descent lines formed the ruling strata of the
602 hordes, the clans, and of all Kazakhdom when they were united. From
[565] their ranks came the khans and lesser leaders (sultans, begs, and clan chiefs) by right of first-born descent. Hordes were ruled by descent lines, clans by aristocratic lineages.

The supreme ruler of the Kazakhs, when there was one, bore the title of Khan. Sultans in Central Asia are of lower rank, the equivalent of princes. The Kazakh domain, when split, divided into a number of principalities whose rulers were sultans, even though some of them dared to assign themselves the more grandiose title of khan. A sultan was rarely a sovereign or independent ruler. The begs and clan chiefs were sometimes identical, but the beg was a local leader whose region varied in scope; it might be no larger than a village or a group of villages, or it might be larger than a clan.

613 Kin villages and families likewise had their individual patriarchal
[622] leaders. The lineage, however, is a different type of organization. It did not have a chief or center of patriarchal authority unless it was small enough for all its members to live in one large kin village; yet it could be so large as to be identical in size with a clan, in which case it would be ruled by a clan leader. The primary function of the lineage was to serve as a marriage unit, the genealogies once again providing [582] the basis for the practices adopted. Kazakh boys and girls could not marry if they had a common male ancestor in the seventh generation; with kinship in the eighth degree or higher marriage was permitted. The genealogy traced back to the seventh ascending male ancestor is the smallest lineage of the Kazakh. The lineage is a unit of varying scope, depending on the function involved; the lineage for marital purposes comprised seven generations, the genealogy memorized by an individual many times that.[1]

491 Each clan had a distinctive manner of marking the ears of or
[614] branding its livestock to differentiate the stock from that of other clans. However, the clan was not the property-owning unit. The clan leader might step in and make a decision regarding a pasturage or head of [595] cattle in dispute between two villages, for the judicial authority rested ultimately in his hands; his decisions might appear biased in his favor, but he could not permanently dispose of pasturage or stock which was not his own, even though it bore the brand or earmark of the clan he led. Similarly, until collectivization, the village authority rested in the [C22] hands of a village elder who served as a judge, but rarely could the [592] judge dispose of property which was not his own.[2]

[1]Grodekov, 1889, p. 27; Alkyasarin, 1870, p. 104.

[2][for footnote see cat. 116, f. 41 - ANALYST.]

may even place the authority in the hands of an adult son, if he has one, or a brother. Recourse to such action may be taken only rarely, but it is nevertheless a recognized delimitation of paternal powers. The parental authority over the son serves as the model for all authority patterns in Kazakh society, such as those involving the village elder, the clan leader, the beg, and the khan.[1]

In the past the parental authority was limited in another sense; the family was part of a village which camped and pastured its herds in common. The leaders of the village decided when and where to camp, when to change camp, when to break up the winter concentration of herds and families and move to the more dispersed spring and summer pastures.[2] A family head disobeyed these decisions at his risk. It was to his interest to follow them, since he gained many things thereby: fellowship, social position, protection from dangers by weight of numbers, assistance in time of need. The village in turn was subordinate to the clan authority if there was one. In case of raids, feuds, or other breaches of the peace, a village leader would appeal to the clan chief for aid. In a dispute between villages, a village elder would appeal to his clan chief for a judgment in his favor.

The village elder was the judge of his community, and decided all cases, usually with the support of the other senior men of the village. Appeals from their decisions were rare, defiance of their decisions even rarer. Behind the judgment of the village leader and the other elders lay the force of social solidarity, the weight of the entire village; defiance meant ejection and flight. Defiance of father by the son had similar consequences. The ultimate authority rested with the khan, if there was one, and if he cared to use his power, for he backed his authority with an army and the right of punishment by death or imprisonment, in addition to the force of his position.

The Kazakh household could include several wives if the position and wealth of the master allowed it. In one community studied, the Adai lineage on Mangyshlak peninsula, half the men had only one wife and half had two. In general, very few families contained more than two wives, although there is in theory no upper limit on the number of wives (exclusive of concubines) that a man can have. The ideal number of wives in princely families was considered to be five or nine—in contrast to the ideal number of wives for Moslems which the Koran gives as four. The family and marriage patterns of the Kazakhs are among the traits which give a pronouncedly non-Islamic coloring to their society.[3]

A youth was given his own tent and appurtenances when he came of age; traditionally he was soon to be married, and in fact a substantial number were married by the time they were 20 years old. Even as late as 1926, 222 out of every 1,000 males were married by that age, and in former years the rate was higher. The tent was not identical with the household unit. A young married couple with children did not

[1] Izraitsov, 1897, pp. 5, 11.
[2] Radloff (104), 1893, p. 313; Rudenko et al, 1930, pp. 4-8.
[3] Kovtz (73), 1910, p. 42.

[Great Horde]

622 a similar manner, we have seen this very process at work
177. in the formation of new lineages,[1] whether maximal or
62 minimal, or even clans, with the exception that the process here described involves the transformation of the village through new developments in administration and economy. Nevertheless, the acculturative pattern took on traditional forms, that is, the new village was built up by a process already encountered in lineage fusion. The bii, through his wealth, spiritual powers, sense of justice, and large number of kin (who were able to support his word if necessary by their very strength of numbers) thus continued to dominate the new forms of Kazakh life.[90]

622 At the end of the century, the bii[2] was regarded by
177. the Russians as a kind of official judge, beneath whom
62 •692 was the aksakal, recognized as a popular judge who lived within the village, regulated its affairs in an informal manner. The bii, in contrast, concerned himself largely with inter-aul matters, which is a formalization of the relative positions as they had been reported in the previous era.[91] One of the most important functions of the bii, whether in the matter of inter-aul, or intra-aul relationships, was the determination and resolution of conflict regarding the winter pastureages.

[90] Ibid., I, 513-514.

[91] Sabataev, 66. Sabataev's observations bear rather on the Kazakhs of the Middle and Little Hordes, but may be taken to be relevant for the Kazakhs generally.

[1] [cf. especially Cat. 116, AHI Mongolia, p. 405 ff. -- Analyst]
[2] [i.e. elder; cf. cat. 116, AHI Mongolia, p. 411 ff. -- Analyst]

conflict regarding the winter pasturages.

The bii[1] moreover had important functions in regulating marriage settlements, although he had little authority over the family of the bride, if for example, it should alter the amount of dowry it had arranged to settle on the bride.[92] The reason for this is clear: the family of the bride had a different set of consanguineal relationships, she belonged to another lineage, another village (as a rule) under the judiciary guidance of another bii. Thus we observe in a direct manner a further functioning of the principle of patrilineal descent, in its effect on the authority of the local elders and judges, delimiting their power according to the extent of their agnatic kin.

Even in the period starting with the end of the 19th century, when strong acculturative influences were instituted, the principle of descent in the paternal line continued to play a dominant role. The Kazakhs of the Great Horde were now settled in Russian administrative districts called volosti, which were in turn divided into still smaller units. According to Izraztsov, the influence of the bii[1] seldom extended beyond the smaller division of the volost' in which he lived, and even more rarely extended beyond the volost' itself. The force of his

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[92] Izraztsov, 82.

[1] [i.e. elder; cf. ca. 116, AHI Mongolia, p. 411 ff. --Analyst]

[Great Horde]

judgments were likewise restricted; and the same agnatic principle obtained: most of the inhabitants of a volost' were kin, and the volost' was in general the means for recognizing and preserving the legal integrity of the kin unit in this manner.[93] And even if the new kinship groupings were not the same as those existing prior to the Russian culture contact, nevertheless the fiction in force made those in the same volost' kin to each other, and carried forward the principles upon which Kazakh society was based, even though in an altered external form.

Both under the new and the old (i.e., before and after the Russian conquest) forms, a man stood with his kinsmen regardless of where his own sympathies might lie, and he supported the judgments of his bii[1] against all outsiders, both the more distant kinsmen and strangers. Thus through the person of the local judge the principle of agnatic kinship determined the mode of adjudicating disputes between affinally related families, between or among various suls, or persons belonging to different families, suls, sub-lineages, etc. And the relationships thus called into dispute had been established in the first place through the operation of other rules within the principle of agnatic kinship. The affinally related families necessarily belonged to different patrilineages

[93] Ibid., 4, 26.

[1] [i.e. elder; cf. Ost. ms, AHI Mongolia, p. 411 ff. -- Analyst]

632 because of the rule of lineage exogamy. The members of
611 an <u>aul</u> generally were related because one's most trusted
602 friend was one's closest kinsman, upon whom one could
692 place the greatest reliance for mutual aid measured in wealth or arms. And the <u>bii</u> himself embodied the agnatic principle because he was in the ideal circumstance the senior male in the ranking family of a Kazakh community.

177.6 One effect of culture contact at the end of the 19th
601 century, we have seen, was the organization of the Kazakhs into Russian administrative units; and despite this new mode of social organization, certain structural principles continued to exert their force: namely, the inhabitants of a given district recognized either a real or assumed kinship with others of the district. The acculturative process may be further examined to see which structural features survived as the least common denominator of
177. Kazakh life, and which were stripped away. The division
56 of the Kazakhs into estates by seniority of descent lines
565 through primogeniture and differential succession has been discussed. These estates, the white bone or aristocracy, and the black bone or commoners, did not intermarry until after the Russian conquest, when the young people of the succeeding generation, that is, from the late 1880's and on, began to ally themselves in marriage, regardless of white or black estate, without difficulty.[94]

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[94] Dingelstedt, 146.

8:Kostenko -33-G-4,5(1868-80)1880 RL1 Turkestan
Kazak RQ2

681 Among alomst all ancient peoples and among the Kazakhs there existed the law of retribution, that is, death for murder or rape - and mutilation for mutilation. But time and the prevalance of a new order have changed this custom. However, down to the Russian domination, ransom was permitted for murder. For the death of a man a thousand horses were usually paid, and half that for the murder of a woman. This ransom is called 'kun', and when the crime can be hidden from the Russian authorities this is done even today.

692 In general all legal judgments, civil and criminal, just as all public affairs, according to custom can never depend on the will of one person, but are always made with the agreement of several elders, beys or honored persons in general. These persons had and still have today the right to receive a tenth part of the property of the guilty person, or, if it is a civil matter, the same share from the payment
696 of retribution which they decide. The 'baranta'
628 is a completely unique crime among the Kazakhs. The beginning of these feuds was almost always legal, that is, they usually began from the unwillingness /347/ of one of the contesting parties to abide by the decision of the elders. In such a case the injured party had the legal right to obtain satisfaction by force, that is, to make raids, steal cattle and capture the people. It is self-evident that those who were plundered did the same in return, believing that more had been taken from them than should have been according to the legal judgment. Thus the stealing, robbery and murder committed by both sides confused the question more and more, and quarrels and feuds lasted in this way for decades, eventually even dividing clans.